

*In the Matter of Jackie Seton*

CSC DKT. NO. 2011-489

OAL DKT. NO. CSV 10781-10

**(Civil Service Commission, decided May 18, 2011)**

The appeal of Jackie Seton, Human Services Assistant, Trenton Psychiatric Hospital, Department of Human Services, indefinite suspension, on charges, was heard by Administrative Law Judge Lisa James-Beavers, who rendered her initial decision on March 21, 2011. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on May 4, 2011, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

### **ORDER**

The Civil Service Commission finds that the action of the appointing authority in suspending the appellant indefinitely was justified. The Commission therefore affirms that action and dismisses the appeal of Jackie Seton.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSV 10781-10

AGENCY DKT. NO. 2011-489

**IN THE MATTER OF  
JACKIE SETON,  
TRENTON PSYCHIATRIC HOSPITAL.**

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**Stephan Siegel**, Esq, for appellant (Matlin and Siegel, attorneys)

**Linda Astorino**, appearing pursuant to N.J.A.C. 1:1-5.4(a)(2), for respondent

Record Closed: February 4, 2011

Decided: March 21, 2011

BEFORE **LISA JAMES-BEAVERS**, ALJ:

**STATEMENT OF THE CASE**

Appellant Jackie Seton appeals from respondent Trenton Psychiatric Hospital's imposition of an indefinite suspension pending disposition of criminal charges from the position of Human Services Assistant.

## **PROCEDURAL HISTORY**

On November 23, 2009, respondent advised appellant that he was suspended immediately with pay in a Preliminary Notice of Disciplinary Action. According to the Preliminary Notice of Disciplinary Action, appellant was indicted by a New Jersey State Grand Jury for purposely obtaining unemployment insurance benefits valued at \$6,996 by submitting or causing to be submitted documents for unemployment insurance benefits and knowingly making a false written statement that he was unemployed in violation of N.J.S.A. 2C:20-4; N.J.S.A. 2C:20-2b(2)(a) and N.J.S.A. 2C:28-3(a). On December 2, 2009, respondent issued an Amended Preliminary Notice of Disciplinary Action indefinitely suspending appellant pending criminal charges without pay. By Final Notice of Disciplinary Action dated July 22, 2010, respondent advised appellant that he was suspended indefinitely pending disposition of the criminal charges. Appellant appealed to the Merit System Board, which forwarded this matter to the Office of Administrative Law (OAL) for hearing as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13 on September 10, 2010. The case was filed at the OAL on September 27, 2010. A hearing was held on January 21, 2011. The record remained open for two weeks for the parties to submit any additional relevant cases and closed on February 4, 2011.

## **ISSUE**

The issue in this proceeding is whether appellant should be suspended pending disposition of the criminal charges.

## **FINDINGS OF FACT**

The facts are undisputed in this case. Appellant was indicted on one count of theft by deception, a crime of the third degree and one count of unsworn

falsification to authorities, a crime of the fourth degree, in violation of N.J.S.A. 2C:20-4; N.J.S.A. 2C:20-2b(2)(a) and N.J.S.A. 2C:28-3(a) for allegedly collecting unemployment insurance benefits while he was actively employed by the State of New Jersey. Appellant entered Pretrial Intervention (PTI) on March 12, 2010, and is now required to complete the following conditions of PTI. He must pay restitution to the New Jersey Department of Labor in the amount of \$8,479.73. The initial Order set forth that he was to make payments at the rate of \$200.00, but in recognition of the fact that he was unemployed, the rate was reduced to \$100.00 per month. He must pay a \$50.00 fee to the Victims of Crime Compensation Account (VCCA) and pay the Safe Neighborhoods Assessment of \$75.00.

A Human Services Assistant is defined as an employee who, “[u]nder the direction of a supervisor in a health care facility, provides services for residents under indirect as well as direct professional supervision; does other related duties as required.” The examples of work on the civil service description include, but are not limited to, helping residents with plan activities and appointments, assist in providing and maintaining a therapeutic environment for residents either in a ward or a cottage, and assisting residents with and teaching them activities of daily living and performing components of these activities when the resident is unable to do so. He has direct care responsibility for mentally ill patients. He is required to submit written and oral reports when required to do so.

The preceding information is undisputed and is thus **FOUND** as **FACT**.

### **CONCLUSIONS OF LAW**

The issue in cases in which the appointing authority is seeking suspension pending criminal charges cases is whether the public interest would best be served by suspending the employee until disposition of the criminal complaint.

N.J.A.C. 4A:2-2.7(a)1. The standard is whether the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services. N.J.A.C. 4A:2-2.7(a)1. In the present case, the more thorny issue is what constitutes “disposition” under the statute. The appointing authority may suspend an employee immediately when the employee is formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job. N.J.A.C. 4A:2-2.5(a)(2). There is no question that appellant has been charged with a crime of the third degree. The appointing authority may impose an indefinite suspension to extend beyond six months, where an employee is subject to criminal charges as set forth in N.J.A.C. 4A:2-2.5(a)2, but not beyond the disposition of the criminal complaint or indictment. N.J.A.C. 4A:2-2.7(a)2.

Appellant argues that disposition has occurred. Appellant has entered PTI and has received his Order accordingly. He has no criminal conviction since he was accepted in the program and must only pay fines and make restitution to the Department of Labor, Unemployment Division. Appellant further argues that he needs the job to pay his restitution. Respondent argues; however, that until he makes restitution, the indictment against him is still pending. Thus, respondent continues, the suspension must continue until appellant fully pays the money back to the Department of Labor and meets all of the conditions for PTI. Only then will the charges be dismissed.

N.J.A.C. 4A:2-2.7(a)2i provides that when an employee who has been suspended indefinitely enters PTI, the indictment is not deemed disposed of until completion of PTI. However, N.J.A.C. 4A:2-2.7(a)2ii sets forth that such suspension is discretionary when it notes that, “An appointing authority **may** continue an indefinite suspension until completion of PTI...” (emphasis added) This provision further provides that the appointing authority that chooses not to continue an indefinite suspension during the PTI period may restore the

employee to employment. Appellant argues that respondent should exercise its discretion not to pursue suspension in this case.

A close reading of the PTI papers (R-5) sheds additional light on this issue. Page one indicates that appellant is agreeing to a “postponement” of further proceedings for a period not to exceed three years. Page two sets forth an agreement from appellant as follows, “I understand the conditions of PTI Supervision and that they apply to me, and I further understand that failure to comply on my part constitutes a violation of PTI Supervision and may cause my termination from the program and prosecution of the charges against me.” Given that appellant owed \$8,479.73 as of March 11, 2010 and was required to pay back only \$100 per month, he will not be completely finished paying for eighty-one months or over six years. Since the period is not to exceed three years, it is not clear what will happen at the end of the three years if appellant has only paid half of the restitution amount. In any event, it is evident from the administrative code and the papers that appellant’s acceptance into the program does not constitute a disposition, but rather a postponement of proceedings pending compliance with all of the requirements of the program. Because there has not yet been a disposition of the charges, appellant has a charge involving dishonesty pending against him. As a public employee, he must be trustworthy and honest. The pending charges cast doubt on his ability to be entrusted with the direct care of patients who rely heavily on the staff for their needs. the public interest will be best served by continuing the indefinite suspension of appellant until such time as all of the conditions for PTI have been met, which is after restitution is complete.

For the foregoing reasons, I **CONCLUDE** that an indefinite suspension pending disposition of the criminal complaint is necessary to maintain order and effective direction of public services.

### **ORDER**

It is **ORDERED** that the action of the respondent, Trenton Psychiatric Hospital, in indefinitely suspending appellant's position as a Human Services Assistant, pursuant to N.J.A.C. 4A:2-2.5(a)2 and N.J.A.C. 4A:2-2.7(a)2 is **AFFIRMED** and it is **ORDERED** that appellant's appeal be and is hereby **DISMISSED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

March 21, 2011  
DATE

  
LISA JAMES-BEAVERS, ALJ

Date Received at Agency:

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Date Mailed to Parties:

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cmo

**APPENDIX**  
**WITNESS LIST**

**For Appellant:**

None

**For Respondent:**

None

**EXHIBIT LIST**

**For Appellant:**

None

**For Respondent:**

- R-1 Preliminary Notice of Disciplinary Action dated 11/23/09
- R-2 Preliminary Notice of disciplinary Action dated 12/2/09
- R-3 Final Notice of Disciplinary Action dated 7/22/10
- R-4 State Grand Jury Indictment (5 pages)
- R-5 Pretrial Intervention Order dated 3/11/10
- R-6 Civil Service Commission Job Specification for H.S.A.
- R-7 NJDEP PMIS History for Jackie Seton
- R-8 Disciplinary History Summary with amendment
- R-9 N.J.A.C. 4A:2-2